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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,237	03/15/2001	Karapet Ablabutyan	23451-037	8258

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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 07/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/811,237

Applicant(s)

ABLABUTYAN ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003 and 06 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 27-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 46-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 07 April 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 20-50 have been renumbered 21-51.

2. Newly submitted claims 27-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26 and 46-51, drawn to a cantilever liftgate assembly, classified in class 414, subclass 545.
- II. Claims 27-45, drawn to a liftgate, classified in class 296, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a liftgate with a non-cantilevered platform. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-45 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. The information disclosure statement filed 5/6/03 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.
4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 4/7/03 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12 and 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, the recitation that the body is detached from a chassis is not understood; the chassis is not a part of the invention, so whether or not the body is attached thereto is irrelevant.

In claim 15, line 6, "secure to the structure to an underside" is awkward.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-14, 20-26, and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunlop et al in view of Mortenson.

Dunlop et al show a liftgate comprising a unitary frame having opposing side plates 3A, 3B and extension plate 5 extending therebetween, hydraulically driven lift frame 81 pivotally attached to the side plates, and liftgate platform 87 rotatably attached to the lift frame, wherein the liftgate is secured to the vehicle body by brackets 7A, 7B in a fully assembled state which is inherently considered to be capable of "freestanding".

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Dunlop et al do not show the platform to be supported at one end only, although the liftgate as a whole is cantilevered from the vehicle body.

Mortenson shows a liftgate for securement to a vehicle including side plates 14, trunnion tube 16, extension plate 46 which can be welded to the vehicle body, lift frame having linkages 20 with upper and lower arms and lift frame tube 44, liftgate platform 28 supported at one end only and including a stop 48 which prevents movement of the platform past a horizontal orientation parallel to the vehicle body, and hydraulic cylinder 42 which raises the liftgate platform while maintaining it in a horizontal orientation, and which inverts the platform into a storage position when it is rotated to a vertical position.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dunlop et al by supporting the liftgate platform at one end only, as shown by Mortenson, as this would provide greater control of the liftgate platform, especially when used on a larger truck such as that of Mortenson. Note that Dunlop et al disclose that the apparatus may be scaled up for use on larger trucks.

Re claim 2, to have attached the liftgate to the underside rather the end of the truck body would have been an obvious design expediency, especially when used on a larger truck as discussed above.

Re claims 20-26 and 46-51, the modified apparatus of Dunlop et al could obviously be used to perform the method steps set forth.

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9. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson in view of Dunlop et al.

Mortenson does not show the side plates to be secured to the vehicle body, and utilizes two rather than one hydraulic cylinders.

Dunlop et al show the side plates secured to the vehicle body, and discloses in the "background" section that either one or two hydraulic cylinders are art recognized alternate equivalents.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Mortenson by attaching the side plates to the body rather than the frame of the vehicle, and utilizing one rather than two cylinders, as Dunlop et al suggest both modifications as alternate equivalent design choices.

10. Applicant's arguments filed 4/7/03 regarding claims 15-19 have been fully considered but they are not persuasive. Applicant argues that neither Mortenson nor Dunlop et al show the invention as claimed. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. Applicant's arguments with respect to claims 1-14, 20-26, and 46-51 have been considered but are moot in view of the new ground(s) of rejection.


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12. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/7/03 has been entered.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
July 22, 2003